

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Philip Lightfoot, 221323,

Petitioner,

v.

Case No. 11-14968
Honorable Victoria A. Roberts

Warden Scott,

Defendant,

MDOC Paroleboard,

Respondents.

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ORDER DISMISSING PETITIONER'S APPLICATION FOR MANDAMUS

Pro se Petitioner Philip Lightfoot filed suit against Defendants Warden Scott and the Michigan Department of Corrections ("MDOC") Parole Board. As grounds for this Court's jurisdiction, Petitioner invokes the All Writs Act, 28 U.S.C. 1651, Rule 21 of the Federal Rules of Appellate Procedure regarding Writs of Mandamus and Prohibition, and Rule 60 of the Federal Rules of Civil Procedure, Relief from Judgment or Order.

The *in forma pauperis* ("IFP") statute was enacted "to ensure that indigent litigants have meaningful access to the federal courts." *Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir. 1998), *cert. den.*, 525 U.S. 1139 (1999) (quoting *Nietze v. Williams*, 490 U.S. 319, 324 (1989)). Twenty Eight U.S.C. § 1915(a)(1) allows indigents to receive a waiver of filing fees:

[A]ny court of the United States may authorize the commencement,

prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

However, to curtail abuse of waivers granted under the statute, Congress also empowered courts to *sua sponte* dismiss IFP complaints that are frivolous or malicious, or that fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). An IFP complaint “is frivolous where it lacks an arguable basis either in law or in fact.” *Nietzke*, 490 U.S. at 325. Factual frivolousness includes allegations that are “clearly baseless,” “fantastic,” or “delusional.” *Id.* at 327-28.

The Court recognizes that *pro se* pleadings are to be liberally construed and “must be held to ‘less stringent standards than formal pleadings drafted by lawyers.’” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519 (1972)); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986). However, even construing Petitioner’s pleading liberally, he fails to state a claim under federal law.

Petitioner is now serving time for a variety of weapons offenses, aggravated assault, and possession of contraband in prison. Petitioner asks the Court to recalculate his discharge date. He says the amount of time served toward each sentence has expired, and, therefore, that the MDOC is holding him in violation of the Constitution.

The affidavit of Cynthia Partridge of the MDOC, attached to Petitioner’s pleading, reveals his claim to be baseless. Ms. Partridge describes in detail the process by which the MDOC computes sentences, and concludes: “Plaintiff’s maximum discharge date is

April 7, 2012, and he is lawfully incarcerated pursuant to several concurrent and consecutive maximum sentences of 22 years handed down by the Detroit Recorder's and Gratiot County Circuit Courts." Partridge Aff. ¶ 5.

Because Petitioner is lawfully incarcerated until April 7, 2012, he fails to state a claim that his due process rights are being violated. Petitioner's pleading is frivolous under Section 1915(e); the allegations are clearly baseless.

Accordingly, Petitioner's case is **DISMISSED**.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: December 20, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Philip Lightfoot by electronic means or U.S. Mail on December 20, 2011.

s/Carol A. Pinegar
Deputy Clerk